

BOARD OF EXAMINERS IN OPTOMETRY

A

11-17-2021- Regular Session Minutes - Videoconference

- A. Call to Order** Virtual meeting was called to order at 9:31 a.m. by the Board President, Dr. Mesheca Bunyon, O.D. Board members also present included Marcie Lerner, O.D.; Fran Burgos, O.D.; Mark Gordon, O.D.; Rona Pepper; Kelechi Mezu Nnabue, O.D.; and Margaret Hubbard. Staff present were Patricia Bennett, Board Executive Director; Kecia Dunham, Licensing Coordinator; and Board Counsel Deb Donohue. Also present was Lillian Reese Legislation/Regulations Liaison, as well as Jennifer Cohen, Executive Director from MOA Kim Link, MDH. Dr. Bunyon read the Board's opening statement into the record as well as the Board's mission statement and notice about public attendance.

Maryland Board of Examiners in Optometry Mission Statement

The Board of Examiners in Optometry was created in 1914 The Board of Examiners in Optometry is composed of five optometrist members in our case Mesheca Bunyon, O.D., Kelechi Mezu, O.D., Fran Burgos, O.D., Marcie Lerner, O.D., and Mark Gordon, O.D., and two consumer members Rona Pepper and Margaret Hubbard. All members are appointed by the Governor with the advice and consent of the Secretary of Health. The Board is mandated to regulate the practice of optometry in Maryland and protect the public health and welfare of its citizens by ensuring the delivery of vision services by qualified optometrists. It is the responsibility of the Board to:

- *Credential and license applicants
- *Certify optometrists to use diagnostic pharmaceutical agents and therapeutic pharmaceutical agents in practice of optometry
- *Promulgate and adopt regulations to govern the practice of optometry in Maryland
- *Monitor continuing education programs and continuing education compliance
- *Investigate complaints against licensees concerning alleged violations of the law
- *Conduct hearings concerning these violations
- *Discipline licensees found to be in violation of the law

COMAR 10.01 14.02 Public Attendance

A. The general public may attend and observe an open session of a public body within or established by the Maryland Department of Health.

B. Except in instances when a public body expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law a member of the public attending an open session may not participate in the session.

Dr. Bunyon asked whether there were any other people joining the meeting and to introduce themselves. Guests in attendance on the call were introduced.

B. Approval of Agenda: Dr. Bunyon asked for a motion to approve the agenda. It was properly moved by Ms. Rona Pepper and seconded by Dr Gordon. The motion to approve the agenda unanimously passed.

C. Review and Approval of Minutes: The minutes were reviewed. It was properly moved by Dr. Lerner and seconded by Ms. Margaret Hubbard to approve the minutes. The motion unanimously passed.

D. Committee Reports

1. Continuing Education - **Fran Burgos, O.D.**

He stated that the committee approved two courses under automatic approval. Dr Goldman applied to have a one-hour Course which was approved and a LASER Center asked to be approved as an observation site which was also approved.

2. Budget - **Rona Pepper**

End of Fiscal Year 21 Report: \$376,808.00

As of 11/17/2021:

Expenditures — \$97.843.00

Special fund Carryover Over to FY22 - \$124,566.00

3. ARBO — **Mesheca Bunyon, O.D.**

Dr. Bunyon reported that there was no new ARBO information.

She stated that she attended the Board's Telehealth Committee meeting. She stated that Dr Gordon was the liaison in the meeting and will have more to say on that. She also stated that there was something to report but she will let the executive Director state it.

E. Old Business

1. Regulations Ms. Lilian Reese went over bills and regulations in process. She provided an update. Therapeutic pharmaceutical agents regulations were finalized and became effective on November 15, 2021. She stated that Ms. Bennett will be posting it on the website. She also stated that the Telehealth proposed regulations were in limbo along with other Boards' proposals. The Governor's office has not stated why these are in limbo. She will keep an eye on it and update as the session goes along.
2. Legislative Session. The session begins on January 12th. The Board has a Sunset extension Bill to continue the Board until 2033. She stated she does not know if the Legislative session will be virtual or in-person. She will keep us informed. Dr Bunyon stated we will need to craft a position paper for testifying and she will keep us informed.
3. Telehealth. Dr Bunyon asked everyone to review the packet on telehealth from the MOA. Basically, there are businesses providing services to patients via Telehealth. Dr Gordon, the liaison on this, spoke and provided guidance. He explained that several Boards are having the same issues we are having because many people are using Telehealth in the way it is not supposed to be, which hurts the public. There may be legislation that may limit this.

He also spoke to 20/20 - a company that wants to put Telehealth equipment in his office and they stated that they used Ophthalmological Techs and do not need Optometrists to do refractions. He stated the attorney for the Board will speak on this and let us know what options we have.

Dr Mesheca Bunyon thanked him for his summary, and she mentioned that many other companies are doing this. She then asked Ms. Cohen if she had any comments. Ms. Cohen stated that the MOA and member Optometrists feel that the technology out there does not maintain the standard of care. While we don't want to be anti-technology, we also want to move with the times but carefully to ensure the public is being protected as technology is being advanced. She mentioned there may be legislation to allow out-of-State providers and doctors to provide Telehealth under a compact.

Board Counsel also reviewed the state of this issue and the direction the Board wants to go. Board Counsel stated that if the legislature adopted the "Compact" then the Board would be subject to it. "Compact" means you may be able to practice across State lines if at least ten states join the compact. Ms. Link also confirmed this. If Maryland is one of the compact states, and you want to practice in California, then that is possible (if California is also a compact state) and it has to be according to the terms of the "Compact." She said it seems to be the way of the future.

Dr Burgos asked if it is different from reciprocity and Board Counsel, stated yes and explained it. With a "Compact," you simply register for privileges and can practice based on being part of the compact. Ms. Link stated that a compact is a database and anyone who practices, gets registered. In answer to Dr Gordon's question, Maryland will always get a list of someone who was disciplined. Dr Gordon also spoke about the practicality of these compacts. There was further discussion and Dr Bunyon stated that she would like to have Board Counsel to provide guidance on this.

Board Counsel stated that a plan may be to consider the MOA's request to be a petition for a Declaratory Ruling and that COMAR 10.01.12 specifies what needs to be included in a petition. A petition for declaratory ruling is established under the Administrative Procedure Act, Section 10-304. The Board could authorize Ms. Bennett to let MOA know how to proceed. Board Counsel also explained that we will have to consider if a Minimum Optometric Exam would be done using a Remote eye exam. The Board will then have the opportunity to look at requirements to see applications for the minimum optometric exam.

Ms. Bennett explained and outlined the next processes and how to contact the MOA if the Board decides to go this route.

Board counsel stated that a process could be:

- 1): Making a determination to treat the correspondence and research form MOA as a request for Declaratory Ruling on this Telehealth issues.
- 2): Vote to provide Ms. Bennett the authority to provide MOA with the procedures, and if MOA then decides if they want to do the petition and it can then be brought to the Board to consider it and look at the research and look at the Statute as to how it will apply the Statute to this situation.
- 3): Dr Lerner also asked some questions. Board Counsel explained and Dr Gordon stated that we will have to take a vote.
- 4): Dr Mezu asked if these would apply to out-of-State Optometrists or techs doing this Telehealth. Board Counsel explained that the Board's jurisdiction is over optometrists only.
- 5): Dr Bunyon wanted clarification that we would have to wait until a complaint comes forward.
- 6): Board Counsel stated that we are simply outlining a way and a process forward.

Dr Bunyon asked someone to make a motion regarding this issue.

Motion was made by Dr Lerner to treat the MOA's correspondence and research as a petition for Declaratory Ruling under Administrative Procedures Act. The motion was seconded by Dr Burgos. Motion passed.

The Executive Director will provide guidance to the MOA on how to move forward. Motion was made on this by Dr Gordon and seconded Ms. Margaret Hubbard. Motion passed.

F. Executive Director's Report — Pat Bennett

1. Board Newsletter: Ms. Bennett went over the skeletal format and asked for consumer members to draft a brief article. Ms. Margaret Hubbard volunteered to write a consumer article and Ms. Bennett explained that after the election, whoever the new president was, will draft a welcome message and Ms. Bennett said she will do an End-of Year summary for the fiscal year. She would like articles by December 15th before the Holidays. She asked for anyone who would like to write an article or share perspective for the public and other optometrists.

2. 2022 Board Meetings: Ms. Bennett stated that some boards are doing a hybrid session and she also asked if the Board would like to do it next year in-person meeting. Dr Bunyon stated that it would be nice to have the January meeting in-person. Board members asked questions on this. Dr Mezu asked for a hybrid schedule but the Board did not have that capability. Dr Burgos asked how much notice we would need if there was a change. Board counsel explained that we needed at least 24 hours. Dr Gordon explained yes, because of the open Meetings Act.

A motion was made by Ms. Rona Pepper to start off 2022 with an in-person meeting and alternate in-person and virtual for the rest of the year pending schedule changes. It was seconded by Dr Lerner. Motion passed.

3. Mandatory Implicit Bias Training. The plan would be to post information for the licensees who are renewing. Ms. Bennett mentioned that the Dental Board had something similar, and she discussed the issues with CEs and certificates. She stated that the statute does not require certificates and licensees can attest to the training. If audited, then they can show a screenshot. It will be a 2-hour CE and Dr Mezu asked how they will show they took the class? They could take a screenshot per Board Counsel.

Motion was made by Dr Lerner for the licensees to attest to taking the 2 hours of implicit bias course and not require proof of documentation, and to accept 2 hours of CE for this course. It was seconded by Ms. Rona Pepper. Motion passed.

4. Board Member Vacancies: Dr Gordon will complete his first term. Ms. Margaret Hubbard will need to re-apply also. Ms. Cohen will send information to MOA members on those open positions. Ms. Margaret Hubbard may apply for a vacancy on another Board and if she gets it, we may have a vacancy for her position.

5. Board Member Expense Report: There were questions about social security numbers being used on the expense forms. Ms. Bennett clarified that it was the only way for the Comptroller's Office to identify Board Members. Ms. Bennett also explained that Ms. Kim Bennardi encouraged members to share and ask consumer members to join and join various boards.

6. Licensure Requirements: Ms. Bennett clarified this issue

7. Letter (Attachment B) - CE-COPE. Ms. Bennett asked everyone to review the article on COPE that it would continue until June 2022 to allow on-line as Live CE. The Board is in line with that.

8. Personnel Issues: Ms. Patricia Bennett submitted to the Board President, Dr Mesheca Bunyon her notice of resignation and retirement and the Board President accepted her retirement and resignation. She explained that she had been on this Board for 21 years. Originally, she had worked for the Social Worker Board for 5 years. Then she saw the job for our Board, and knew it was for her. Ms. Bennett stated that it has been an honor and a privilege to work with everyone, Board members, ARBO, MOA, Stakeholders and she has loved every minute of it. She stated that she loves her job and would really miss it. Originally, she had wanted to retire July of 2022 and after a lot of deep thought and the urge to be with family, she decided to retire.

She stated that she will be around to help if needed. She is here till January 31st. The position has been advertised and a new person will be hired. Dr Bunyon thanked her for her service and gave Board members the opportunity to recommend someone. She also explained the process to hire a new person and she will update us on that. Discussion followed and everyone expressed how much they would miss her. Dr Mezu reiterated with Dr Bunyon how much Ms. Bennett was loved and will be dearly missed.

G. New Business

1. Licensees: A motion was made to approve the four licensees by Ms. Margaret Hubbard and seconded Dr Burgos. Motion passed.

2. Board Elections: Dr Mesheca Bunyon handed over to Ms. Bennett who explained the process and asked Ms. Margaret Hubbard to call for nominations. Ms. Bennett read the duties of the officers.

1st---Treasurer: Ms. Bennett explained the duties. Dr Mezu nominated Ms. Rona Pepper. Ms. Margaret Hubbard asked if there were any other nominees. Since there were not, Ms. Rona Pepper was elected as Board Treasurer, unopposed.

2nd: ---Secretary: Ms. Bennett explained the duties. Ms. Margaret Hubbard asked if there were any nominees. Dr Bunyon nominated Dr Mezu to continue as Board Secretary. All voted in favor of her continuation as Board Secretary.

3rd: ----President: Ms. Bennett explained the duties. Ms. Margaret Hubbard asked for nominees. Dr Mezu nominated Dr Mesheca Bunyon to continue to serve as Board President. Vote was unanimous for Dr Bunyon to continue as Board President.

Ms. Margaret Hubbard thanked everyone.

H. Adjournment

Dr Mesheca Bunyon asked if there was any other business before this Board. Since there was none, a motion was made to adjourn by Ms. Margaret Hubbard and seconded by Ms. Rona Pepper. The Board's vote was unanimous. The meeting was adjourned at 10:59 a.m.

Respectfully submitted,

Dr Kelechi Mezu, O.D.

Board Secretary